

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2130

IN THE MATTER OF:

Served July 23, 1980

Application of CALL-A-MESSENGER,)
INC., for Special Authorization)
to Perform Charter Operations)
Pursuant to Contract with Trans)
World Airlines, Inc.)

Case No. CP-80-03

By application filed July 2, 1980, Call-A-Messenger, Inc. (CAM), seeks authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under a contract with Trans World Airlines, Inc. (TWA), transporting TWA flight attendants, over irregular routes, (1) between Dulles International Airport, Herndon, Va., and Washington National Airport, Gravelly Point, Va., on the one hand, and, on the other, points in Washington, D. C., (2) between Dulles International Airport and Washington National Airport via a route traversing the District of Columbia and (3) between Andrews Air Force Base, Md., on the one hand, and, on the other, Washington National Airport, Dulles International Airport and points in Washington, D. C. The application, the underlying contract and supporting documents submitted by CAM were described in Order No. 2126, served July 7, 1980, which is incorporated by reference herein. Notice of the application was duly published, and Executive Limousine Service, Inc., filed a protest in response to that notice.

Executive holds Authorization No. SP-18-05 to operate pursuant to Special Certificate No. 1, transporting TWA aircraft crews, together with their baggage, in charter operations pursuant to contract with TWA, between Dulles International Airport and Washington National Airport, on the one hand, and, on the other, points in the District of Columbia and Prince George's and Montgomery Counties, Md. Underlying this authorization, Executive has a contract dated January 13, 1975, to transport international crew personnel and employees of TWA, and a contract dated January 29, 1979, to transport TWA flight attendants. The January 29, 1979, contract is virtually identical to the contract underlying CAM's application.

Executive contends initially that a grant of this application would increase traffic and confusion at the airports as a result of duplicate operations, and that needed revenue would be diverted from Executive thus jeopardizing its existing service to the general public.

The first argument is valid only if one assumes that both Executive and CAM would be utilized by TWA, an assumption which the record neither supports nor refutes. The second, of course, has no bearing on the issues to be considered under Regulation No. 70 which governs the disposition of this application.

Executive also argues that the proposed operations would be conducted by owner-operators in violation of our regulations including Regulation No. 69 governing leasing of motor vehicles. Protestant apparently misreads CAM's 1979 Annual Report when it says that applicant has no drivers, inasmuch as that report under the heading "Independant (sic) Contractors" shows 45 owner-operators and 22 "drivers-CAM Owned vehicles". Nevertheless, it cannot be ascertained from the record whether owner-operators are used for passenger transportation or solely for applicant's messenger service.

It is clear, as protestant points out, that CAM shows a negative net worth and a consistent pattern of operating losses. However, no new capital expenditures are required for the proposed service which is projected to operate at a profit. Accordingly, it is concluded that operation of this service would help applicant's financial position rather than support a finding of financial unfitness.

Finally, Executive asserts that the CAM-TWA contract does not comply with Regulation No. 70-05 because it is cancellable on 30-days' notice and is not for a fixed term of at least 181 days. We note that schedule B of the contract includes a five percent reduction on all rates for the first year of the contract, thereby raising at least an implication that the parties contemplate a long-term relationship.

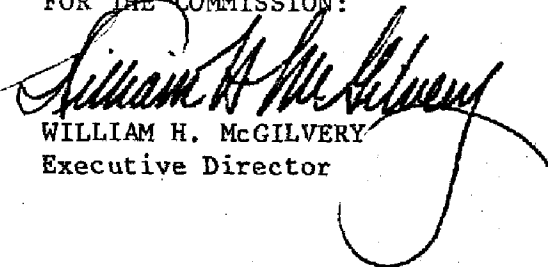
Regulation No. 70-06 requires the Executive Director to make a determination of the applicant's fitness and of the conformance of the proposed operations with the provisions of Regulation No. 70. Resolution of these issues favorably to CAM is impossible on this record and the application must be denied.

There exist three serious shortcomings in applicant's burden of proof. CAM has not affirmatively demonstrated that the service will be conducted by its own employees under CAM's control. Use of owner-operators or independent contractors to conduct operations subject to the jurisdiction of this Commission has always been prohibited. Only a duly authorized carrier may perform operations subject to the certification requirements of the Compact. Likewise, there is no statement from TWA regarding discontinuance of its indefinite contract with Executive. Applicant's financial projections appear to be based on the assumption that CAM will enjoy all available TWA flight attendant traffic. The record, however, leaves open the possibility that both CAM and Executive would be called upon for service which could well result in adverse fiscal and operational consequences.

Finally, the Regulation requires a definitive contractual term of at least 181 days cancellable only for good cause. Accordingly, the Executive Director finds that the present record requires a determination of both issues in favor of the protestant.

THEREFORE, IT IS ORDERED that Case No. CP-80-03 of Call-A-Messenger, Inc., is hereby denied.

FOR THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director

